COURT NO.3

Criminal Revision no. 934 of 2001

Irfan and 5 others---------- Revisionists-victims

Versus

State of Uttaranchal and 11 others---------- Respondents

Hon'ble Irshad Hussain J.

This criminal revision under section 397/401 of the Code of Criminal Procedure ("Cr.P.C. "_for the short) has been filed against the judgment and order dated 17.08.2001 passed by the Sessions Judge, Haridwar, whereby the respondents-accused were held not guilty and acquitted of the charges under sections 147/148/149/302/307 of the Indian Penal Code (for the short- "IPC") and further that the respondents-accused Khusro, Shakil, Talib, Shamshuddin and Noor Hasan were also held not guilty and were acquitted of the charges under section 25 of the Arms Act. A common judgment and order impugned was passed in sessions trials no.38/2000, 166/2000, 167/2000,168/2000, 169/2000 and 170/2000 of police station, Jwalapur, district Haridwar, as these were consolidated. The revision has been preferred amongst other by the injured persons.

Briefly stated, the prosecution case was that on 5.07.1999 at about 9.00 P.M. in village Sarai within the circle of P.S. Jwalapur all the respondents-accused in furtherance of common object of the unlawful assembly assaulted complainant, Shamshad, Irfan, Rustam Ali, Farman, Amjad and Naushad and others by wielding fire arm, referred as, Tamanchas, Lathi-Danda and swords. The injured Shamshad succumbed to the fire arm injuries received in the occurrence. According to the prosecution, the assault was the result of some dispute pertaining to the possession of a public school in the village. The first information report (FIR) of the occurrence was lodged by informant Nasir Ahmad, the brother of the deceased Shamshad, at about00.15 a.m. on 6.7.1999. A case was accordingly registered and on completion of the investigation chargesheet against all the respondents-accused under sections 147/148/149/302/307 IPC was filed on 20.8.1999. Since on the pointing

of the respondents-accused named above arms were recovered separate chargesheets were also filed against them for having committed the offence punishable under the provisions of Arms Act. All the cases were committed to the Court of Session, which came to be tried together as mentioned above.

Heard Sri Nanak Chandra Gupta, learned counsel for the revisionists and learned A.G.A. for the State and Sri Vinod Sharma, Advocate for the respondents-accused.

The learned counsel for the revisionist submitted that the learned Sessions Judge has failed to exercise the jurisdiction vested in him in accordance with law in the matter of trial and disposal of all the sessions trials without examining the injured witnesses of the occurrence whose evidence was material and necessary for the fair and just decision of the case. It was also pointed out that the session trials were disposed of in such a hot haste that these were consolidated on 17.8.2001 and the charges were framed against the respondents-accused the same day and the evidence of the prosecution was also recorded on this very date and thereafter the same day the judgment of acquittal was also delivered after closing of the evidence on the plea of the complainant that his other inured witnesses were not willing to come forward to give evidence in the case although no injured witness came to be examined by the prosecution in the trial. It was further argued that even the D.G.C. (Criminal) Sri Diwakar Chamoli has not cared to point out that important injured witnesses of the case are required to be examined in the case and that their attendance for evidence need to be ensured by following the procedure prescribed by law.

On the other hand, the learned counsel for the respondents-accused submitted that under the revisional jurisdiction, the court has limited powers to interfere with the judgment of acquittal and there is nothing to indicate that there has been any manifest illegality or miscarriage of justice in the matter of trial and that, therefore, it will not be legally just and proper to set aside the judgment of acquittal and to direct the respondents-accused to face second trial. Having considered the submissions in the light of the legal aspects of the matter it need to be pointed out at the outset that the submissions of the learned counsel for

the revisionists have force and it is a fit case in which the legal infirmity require interference with the findings of acquittal so that re-trial may be ordered for the purpose of recording the evidence of remaining witnesses of the prosecution and a fresh decision according to law.

The reasons are that it is evident that the learned Sessions Judge went on to conclude the sessions trials in hot haste as indicated in the arguments of the learned counsel for the revisionists. Application (paper no. 16 B) was filed by the D.G.C.9Criminal) Haridwar on behalf of the prosecution on 17.8.2001 to consolidate the connected six session trials as they arise out of the same occurrence. On that very day, the charges were framed against the respondents-accused. The learned Sessions Judge then on the very day went on to record the evidence of four witnesses, none of whom was injured of the instant occurrence. An application by the informant was, thereafter, filed through the D.G.C. (Criminal) and as per request 12 witnesses including the injured were discharged and the evidence of the prosecution was closed. The learned Sessions Judge thereafter pronounced the judgment of acquittal the same day. The procedure thus followed in this case clearly indicates that the cause of prosecution to bring justice also to the victims of the occurrence came to be frustrated. The learned Sessions Judge in the peculiar circumstances of the case, was legally obliged and duty bound to issue summonses to the injured witnesses instead of accepting the contention of the informant that injured witnesses are not willing to depose against the respondents-accused in the case. IN a recent judgment, Hon'ble Supreme Court in the case of **Shailendra Kumar Vs. State of Bihar and others, 2002 CRI.L.J.568** has deprecated that such a procedure and non-exercise of jurisdiction by the trial court in not summoning important witnesses to be examined in the trial. It was held that

> "In a murder trial it is sordid and repulsive matter that without informing the police station officer-in-charge, the matters are proceeded by the Court and by the App and tried to be disposed of as if the prosecution has not led any evidence. From the facts, it appears that accused wants to frustrate the prosecution by unjustified means and it appears that by one way or the others the Addl. Sessions Judge as well as the APP have not taken any interest in discharge of their duties. It was the duty of the Sessions Judge to issue summonses to the Investigating Officer if he failed to remain present at the time of trial of the case. The presence of Investigating

> Officer at the time of trial is must. It is his duty to keep the witnesses present. If there is failure on part of any witness to remain present. It is the duty of the Court to take appropriate action including issuance of bailable/non-bailable warrants as the case may be. It should be well understood that prosecution cannot be frustrated by such methods and victims of the crime cannot be left in lurch."

Without dilating further on the manner in which the trial was concluded, there can be no gain saying that the learned Sessions Judge has failed to properly exercise his jurisdiction in the trial of the case and further that the learned D.G.C. (Criminal) Haridwar has also failed to perform him duty in proper and fair trial of the respondents-accused and this has resulted in gross legal infirmity both in the procedure as well as in the conduct of the trial.

The reason to interfere with the judgment of acquittal is also that the interest of public justice requires correction of manifest illegality or the prevention of gross miscarriage of justice resulting from the procedure followed in conduction the trial. The facts and circumstances of the case clearly indicate that the case falls within the parameters laid down by the various decisions of the Apex Court in regard to the exercise of revisional jurisdiction by the High Court under section 401 Cr.P.C. The Apex Court in a recent judgment in the case of **Bindeshwari Prasad Singh alias B.P.Singh and others Vs. State of Bihar and another,** 2002 AIR SCW 3315 while adverting to earlier decisions of the Apex Court laid stress on the legal proposition that exercise of revisional jurisdiction is only warranted in case where there is manifest illegality resulting grave miscarriage of justice as a result of legal infirmity either in the procedure or in the conduct of the trial. The facts as narrated above clearly indicate that it is a case in which there has been legal infirmity both in the procedure as well as in the conduct of the trial in a much as the interest of the victims and the society at large had not been looked into while the evidence of the important injured witnesses was not recorded and the trial was concluded in hot haste holding the respondents-accused not guilty of the charges leveled against them.

For the above reasons the revision is fit to be allowed and the impugned judgment of acquittal is liable to be set aside. I order

accordingly and set aside the impugned judgment and order dated 17.8.2001 passed by the learned Sessions Judge, Haridwar. The learned Sessions Judge shall record the evidence of injured witnesses and other evidence in the sessions trials and thereafter decide the same according to law. The evidence already recorded shall be the evidence in the trial.

The conduct of D.G.C. (Criminal) Sri Diwakar Chamoli has not been upto the mark in the matter of prosecution of the trial. A copy of the Judgment be sent to be Government through the Secretary-cum-L.R., Government of Uttaranchal, Dehradun for necessary action.

(Irshad Hussain J.)

September 19, 2002,
MPS